

1 THE HONORABLE JOHN C. COUGHENOUR  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 PEOPLES BANK,

10 Plaintiff,

11 v.

12 F/V ERIN CARROLL, WN Registration No.  
13 WN85212SB, *in rem, et al.*,

14 Defendants.

CASE NO. C20-0150-JCC

ORDER

15 This matter comes before the Court on Plaintiff's motion for an order appointing  
16 substitute custodian (Dkt. No. 4). Having considered the relevant record, the Court GRANTS the  
17 motion.

18 Plaintiff represents as follows:

19 1. On January 30, 2020, Plaintiff filed its verified Complaint herein, requesting that  
20 the vessel F/V ERIN CARROLL, WN Registration No. WN85212SB (the "Vessel"), its engines,  
21 machinery, and other appurtenances, including SQUID PERMIT #SVT076 and PELAGIC  
22 PERMIT #54, etc., be condemned and sold to pay Plaintiff's claims and for other proper relief.

23 2. It is anticipated that the Clerk will be authorized by the Court to issue an arrest  
24 warrant commanding the United States Marshal for the Western District of Washington to arrest  
25 and take the Vessel into custody and to detain it in custody until further order of the Court.

1       3. It is contemplated that the Marshal will seize the Vessel forthwith. Custody by the  
2 Marshal requires the services of one or more keepers at a charge of at least \$1,200.00 per day per  
3 keeper, not including charges for moorage and the other services usually associated with  
4 safekeeping vessels similar to the Vessel.

5       4. The Vessel is currently moored at Squalicum Harbor Marina in Bellingham,  
6 Washington. After arrest, it may be necessary to move the Vessel to the facilities of Marine  
7 Lender Services, LLC at 5350 30th Avenue NW, Seattle, Washington, or to other suitable  
8 moorage. It may also be necessary to offload any remaining cargo from the Vessel.

9       5. Plaintiff is agreeable to allowing Marine Lenders Services, LLC to assume the  
10 responsibility of safekeeping the Vessel, and Marine Lenders Services, LLC has consented to act  
11 as custodian of the Vessel until further order of the Court. Fees and expenses to be charged by  
12 Marine Lenders Services, LLC, will be substantially less than the cost of leaving the Vessel in  
13 the custody of the Marshal.

14       6. Buck W. Fowler Jr., managing member by declaration, has stated that Marine  
15 Lenders Services, LLC has no interest in the outcome of this lawsuit; can arrange for adequate  
16 facilities and supervision for the proper safekeeping of the Vessel; and has obtained the legal  
17 liability insurance through Great American (Policy No. CL1932503366) with policy limits of not  
18 less than \$2,000,000, which is expected to be adequate to respond in damages for loss of or  
19 injury to the Vessel resulting from their legal liability or for damages sustained by third parties  
20 due to any acts, faults, or negligence of the substitute custodian. Further, in his declaration, Mr.  
21 Fowler, on behalf of Marine Lenders Services, LLC, has agreed to accept custody of the Vessel  
22 and its equipment in accordance with the terms of this order.

23       7. In consideration of the Marshal's consent to the appointment of Marine Lenders  
24 Services, LLC as substitute custodian, Plaintiff agrees to release the United States and the  
25 Marshal from any and all liability and responsibility arising out of the care and custody of the  
26 Vessel and its equipment, from the time the Marshal transfers custody of the Vessel over to the

1 Marine Lenders Services, LLC. Plaintiff further agrees to indemnify and hold the United States  
2 and the Marshal harmless from any and all claims whatsoever arising out of Marine Lenders  
3 Services, LLC's possession and safekeeping of the vehicle.

4 Given Plaintiff's recitals, the Court ORDERS as follows:

5 1. Upon the seizure of the Vessel its engines, tackle, and other appurtenances, the  
6 Marshal is authorized and directed to surrender custody of the Vessel to Marine Lenders  
7 Services, LLC as substitute custodian. Upon such surrender, the Marshall shall be discharged  
8 from his or her duties and responsibilities for the safekeeping of the Vessel and held harmless  
9 from any and all claims arising out of said custodial services.

10 2. As substitute custodian, Marine Lenders Services, LLC shall see to and be  
11 responsible for the safekeeping of the Vessel. The duties of the substitute custodian shall include,  
12 but are not limited to, ensuring that there is adequate and safe moorage for the Vessel. Marine  
13 Lenders Services, LLC is not required to have a person on board the Vessel, but an officer or  
14 authorized agent of Marine Lenders Services, LLC shall go on board the Vessel from time to  
15 time to carry out the duties of substitute custodian. No other person shall be allowed to enter on  
16 the Vessel except as provided for herein or as otherwise expressly authorized by order of the  
17 Court.

18 3. The Vessel may be moved by tug or by other safe means from its present moorage  
19 to adequate and safe moorage at the facilities of Marine Lenders Services, LLC on the Lake  
20 Washington Ship Canal, Seattle, Washington, or to another suitable location. Marine Lenders  
21 Services, LLC shall notify the Marshal's office that the Vessel is to be moved and shall again  
22 notify the office of the Marshal's office when the Vessel has been moved. Once the Vessel has  
23 been moved to the facilities of Marine Lenders Services, LLC or to another suitable location, the  
24 Vessel shall not be moved again without further order of the Court.

25 4. Marine Lenders Services, LLC may, if necessary, offload any cargo aboard the  
26 Vessel and arrange for storage of the same at a suitable storage facility. The Marine Lenders

1 Services, LLC shall notify the Marshal's office prior to engaging in any such offloading of cargo  
2 and shall again notify the Marshal's office upon the completion of any such offloading.

3 5. Marine Lenders Services, LLC may with Plaintiff's approval permit the Vessel to  
4 conduct normal operations, including fueling, loading, discharging, cargo handling, repairs, and  
5 vessel movement within the District, at the risk and expense of the Vessel's interests. Marine  
6 Lenders Services, LLC shall ensure that any operations of the Vessel that are conducted are  
7 normal port operations—*i.e.*, normal cargo operations, both discharging and loading, repair  
8 work, fueling, and vessel movement—and that the Vessel always remains within the waters of  
9 the Western District of Washington, unless and until otherwise ordered by the Court. Marine  
10 Lenders Services, LLC shall notify the Marshal's office prior to engaging in any such loading,  
11 fueling, and vessel movement and shall again notify the Marshal's office upon the completion of  
12 such activity.

13 6. Marine Lenders Services, LLC may, if necessary, offload any fuel and arrange for  
14 disposal of the same. Marine Lenders Services, LLC shall notify the Marshal's office prior to  
15 engaging in any such offloading and again upon the completion of any such offloading.

16 7. Marine Lenders Services, LLC may, but is not required to, retain a marine  
17 engineer familiar with the Vessel and take him or her on board the Vessel with authorized agents  
18 of Marine Lenders Services, LLC to assist in the securing of the Vessel.

19 8. Marine Lenders Services, LLC may, but is not required to, remove electronic  
20 equipment on board the Vessel if that equipment can be removed easily without damage to the  
21 Vessel. Any removed equipment must be stored safely and securely pending further order of the  
22 Court.

23 9. Marine Lenders Services, LLC may, but is not required to, retain such services as  
24 are necessary to clean the interior and/or exterior of the Vessel. Such services must be performed  
25 under Marine Lenders Services, LLC's supervision.

26 10. Plaintiff shall arrange to pay charges for moorage of the vessel and for the fees,

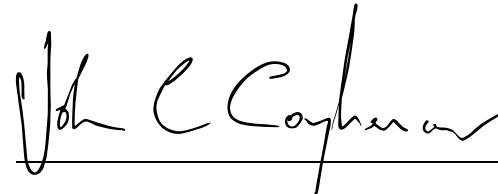
1 costs, and legal liability insurance premiums of Marine Lenders Services, LLC. Plaintiff shall  
2 also reimburse Marine Lenders Services, LLC for other costs that may be incurred in conducting  
3 an inventory of the equipment on board, in securing the Vessel, in having the Vessel cleaned, in  
4 moving the Vessel, and/or in offloading any cargo or fuel from the Vessel.

5       11.     Subject to final approval by the Court, all fees, costs, and expenses incurred by  
6 Plaintiff or Marine Lenders Services, LLC pursuant to the terms of this order shall be deemed  
7 administrative expenses of the Marshal.

8       12.     Plaintiff's attorney shall send copies of this order by certified mail, return receipt  
9 requested, to the owner of the Vessel at the last address known to Plaintiff and to the address  
10 shown on the record of the United States Coast Guard.

11           DATED this 31st day of January 2020.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE